

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

PETER LORA, et al

1:07 CV 2787

V.

JUDGE DAN AARON POLSTER

DEAN BOLAND

RESPONSE IN OPPOSITION TO  
MOTION FOR ATTORNEYS FEES

Dean Boland respectfully requests this court deny Plaintiffs' counsel's motion for attorneys fees and costs for the reasons contained in the attached brief.

/s/ Dean Boland

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**MEMORANDUM**

**JURISDICTION OF THE DISTRICT COURT POST-FILING NOTICE OF  
CROSS APPEAL**

“The filing of a notice of appeal is an event of jurisdictional significance--it confers jurisdiction on the court of appeals and divests the district court of its control over those aspects of the case involved in the appeal.” *Griggs v. Provident Consumer Discount Co.*, 459 U.S. 56, 58 (1982). Any action of the district court pertaining to matters *involved in the appeal* is null and void and will be vacated. See *Rucker v. United States Dept. of Labor*, 798 F.2d 891 (6th Cir.1986); *First Nat'l Bank v. Hirsch*, 535 F.2d 343 (6th Cir.1976); *Keohane v. Swarco, Inc.*, 320 F.2d 429 (6th Cir.1963), *aff'd*, 328 F.2d 615 (6th Cir.1964). Emphasis added.

**RELEVANT FACTS**

The opinion and order and judgment entry disposing of this case at the district court level was filed on October 20, 2011. Doc. Nos. 116, 117.

The complaint in this matter contained a request for damages including attorneys fees. Doc. No. 1.

Doc. Nos. 166 and 117 did not grant attorneys fees to Plaintiffs. Plaintiffs' failed to file any motion requesting a hearing or a grant of attorneys fees in the district court. Instead, Plaintiffs filed a notice of cross appeal. Doc. No. 127. That cross-appeal is currently pending with the 6th Circuit. Doc. No. 128. A briefing schedule for the appeal and cross-appeal was delivered to both parties on November 17, 2011. Exhibit A.

As the above case law notes, the appeals court now has jurisdiction over all matters involved in the appeal. *Griggs, Rucker*, supra. Plaintiffs have made plain in their submissions to the court of appeals that their cross-appeal involves their claim for attorneys fees and costs not granted by the district court. Exhibit B. Therefore, the district court is without jurisdiction to act regarding any post-judgment motion for attorneys fees at this time.

**DISTRICT COURT ENLARGING SCOPE OF JUDGMENT AFTER NOTICE  
OF APPEAL HAS BEEN FILED**

“Although a district court may not alter or enlarge the scope of its judgment pending appeal, it does retain jurisdiction to enforce the judgment.” *N.L.R.B. v. Cincinnati Bronze, Inc.*, 829 F.2d 585, 588 (6th Cir. 1987).

Adding an award of attorneys fees and costs onto the judgment in this case alters the judgment by enlarging its scope. The 6th Circuit has held, as noted above, that district courts lack jurisdiction to alter or enlarge judgments after the filing of a notice of appeal.

**CONCLUSION**

For the reasons above, Defendant respectfully requests this court deny Plaintiffs' counsel's motion for an award of attorney's fees and costs.

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**Proof of Service**

A copy of the foregoing will be served on all parties this 6th of December 2011 by operation of the court's electronic filing system.

/s/Dean Boland  
Dean Boland